

KUTAK ROCK LLP
Loc Pfeiffer (VA 39632)
Peter J. Barrett (VSB 46179)
Bank of America Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219-3500
Telephone: (804) 644-1700
Counsel to Schottenstein Property Group, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

CIRCUIT CITY STORES, INC., *et al.*,

Debtors.

Case No. 08-35653-KRH
Chapter 11
Jointly Administered

**APPLICATION OF SCHOTTENSTEIN PROPERTY GROUP, INC.
FOR AN ORDER ALLOWING ADMINISTRATIVE CLAIM RELATING TO POST-
PETITION CHARGES UNDER LEASE FOR STORE #3196 (BEAVERCREEK, OHIO)**

Schottenstein Property Group, Inc. ("Schottenstein"), by counsel, seeks an Order allowing its administrative claim for charges accruing post-petition under the lease attached as Exhibit 1 (the "Lease") pursuant to 11 U.S.C. §§ 365(d), 503(b) and 507(a). In support of this Application, Schottenstein states the following:

BACKGROUND

1. On November 10, 2008, Circuit City, Inc. and its affiliated debtors (the "Debtors") filed a voluntary petition under Chapter 11 of Title 11 of the United States Code in this Court.

2. Schottenstein is the managing agent/landlord for a shopping center known as Store # 3196 located in Beavercreek, Ohio (the "Leased Premises"). The Debtors leased this property (the "Lease" attached as Exhibit 1).

3. The Debtors rejected the Lease and the effective rejection date was February 21, 2009 (the "Rejection Date") pursuant to an Order of this Court.

RELIEF SOUGHT

4. Schottenstein seeks an allowed administrative claim for charges that accrued post-petition and through the Rejection Date under the Lease. The charges are detailed as follows:

February 2009 rent	20,916.79
Estimate pro-rated 2009 CAM	1,328.11
Pro-rated real property taxes 2009	9,043.54
Total	31,288.44

5. Section 365(d)(3) mandates that the Debtors pay all post-petition obligations arising under the Lease until the lease is rejected. In re Klein Sleep Products, Inc., 78 F.3d 18, 30, n.7 (2nd Cir. 1996); In re Dial-A-Tire, Inc., 78 B.R. 13, 16 (Bankr. W.D.N.Y. 1987) (Section 365(d)(3) requires continued performance under a lease until the lease is rejected). The rejection of a lease and the termination of obligations under Section 365(d)(3) do not occur until an order is entered rejecting the lease. In re Thinking Machines Corp., 67 F.3d 1021, 1028 (1st Cir. 1995). Moreover, Section 503(b) of the Bankruptcy Code permits landlords to obtain administrative claims for post-petition charges for rents, taxes, CAM charges, etc. See 11 U.S.C. § 503(b) (“After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including-- (1)(A) the actual, necessary costs and expenses of preserving the estate . . .”).

6. There is no real dispute that the Debtors’ post-petition use of the Leased Premises qualifies as an “actual, necessary” cost of preserving the estate. Zagata Fabricators, Inc. v. Superior Air Prods., 893 F.2d 624, 627 (3d Cir. 1990) (“There is no question, of course, that the payment of rent for the use and occupancy of real estate...is clearly an ‘actual, necessary’ cost of preserving the estate.”). Accordingly, the charges above are proper, allowable administrative expenses. In re ZB Co., Inc., 302 B.R. 316, 319 (Bankr. D. Del 2003) (“Section 503(b)(1)(A)

grants an allowed administrative claim for the ‘actual, necessary costs and expenses of preserving the estate...).

WHEREFORE, Schottenstein requests the Court to grant the relief herein and to award such other relief as this Court deems appropriate.

SCHOTTENSTEIN PROPERTY GROUP, INC.

/s/ Loc Pfeiffer

Loc Pfeiffer (VA 39632)

Peter J. Barrett (VA 46179)

KUTAK ROCK LLP

Bank of America Center

1111 East Main Street, Suite 800

Richmond, Virginia 23219-3500

Telephone: (804) 644-1700

Facsimile: (804) 783-6192

Counsel to Schottenstein Property Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 30, 2009, a true and exact copy of the foregoing was forwarded via ECF notification to necessary parties, including the following: (i) the Office of the United States Trustee for the Eastern District of Virginia, (ii) the Debtors and bankruptcy co-counsel, and (iii) counsel to the Official Committee of Unsecured Creditors.

/s/ Loc Pfeiffer

KUTAK ROCK LLP

1111 East Main Street, Suite 800

Richmond, Virginia 23219

Telephone: (804) 644-1700

Facsimile: (804) 783-6192